The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

Tel: 617-624-6000
www.mass.gov/dph

December 8, 2017

The Honorable Greg Walden, Chairman
The Honorable Frank Pallone, Jr., Ranking Member
The Honorable Michael C. Burgess, M.D., Chairman, Subcommittee on Health
The Honorable Gene Green, Ranking Member, Subcommittee on Health
Committee on Energy and Commerce
Congress of the United States
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Honorable Committee Members,

Thank you for your leadership regarding substance use disorder treatment programming in Massachusetts and throughout the nation. Combatting the opioid epidemic in the Commonwealth is a top priority of Governor Baker's administration. Since taking office, the administration has passed significant legislation, increased funding and received a Medicaid waiver for the expansion of substance user services. In 2016, more than two thousand Massachusetts residents died of an opioid-related overdose. The total number of opioid-related overdose deaths has increased five-fold in the last 20 years. Not since the AIDS epidemic of the 1980s and 1990s has Massachusetts seen such a sharp increase in a single category of deaths. While we have seen some promising signs over the past few months, this is an epidemic that will take years of sustained hard work to solve.

As referenced in your letter, patient brokering victimizes the patients and families that have taken the critical step of seeking treatment for substance use disorder, a chronic medical disease. As the primary regulator of substance use disorder treatment facilities in the Commonwealth of Massachusetts, the Department of Public Health (the Department) welcomes the opportunity to respond to your request for information.

We have included your specific questions with our responses below:

- *How many drug treatment facilities are within the state of Massachusetts? Please provide a description of what type of facility is considered a drug treatment facility in your state. Please provide a breakdown between inpatient treatment facilities and outpatient treatment facilities.*

As of November 1, 2017, there were 443 substance use disorder treatment programs licensed by The Department of Public Health's Bureau of Substance Addiction Services (BSAS).

State regulations found at 105 CMR 164.006 define "Substance Abuse Treatment" as "an evidence based practice intended to assess status, reduce symptoms, or mitigate the effects of substance misuse, substance use disorders, or co-occurring disorders; reduce risk of relapse and associated harm; or restore or establish well-being for individuals and families; provided, that said practice shall include, but not be limited to, care coordination, case management, medical, pharmacological, psychological, psycho-educational, rehabilitative, or social services and therapies."

As of 11/1/2017, there were 275 BSAS-licensed outpatient services programs (including Satellite locations) and 168 BSAS-licensed residential services programs. The breakdown of inpatient and outpatient treatment programs is as follows:

Outpatient Services = 275 (including satellite locations)

- Opioid Treatment Programs = 44
- Outpatient Counseling Programs = 135 Main; 81 Satellite
- Office Based Opioid Treatment Programs (OBOT) = 11 Main, 2 Satellite
- Acupuncture Detox Program = 1
- Outpatient Detox Program = 1

Free Standing Inpatient/Residential = 168

- Clinical Stabilization Service Programs = 23
- Adolescent Residential Program (Ages: 13 – 17) = 3
- Transitional Aged Youth Program (Ages: 16 – 21) = 2
- Adult Residential Programs = 80
- Family Residential Programs = 8
- Second Offender Aftercare Residential Program = 1
- Transitional Support Service Programs = 10
- Adult Detoxification Programs = 33
- Adolescent Detoxification Programs (Ages: 13 – 17) = 2
- Civil Commitment (Section 35*) Detoxification Programs = 3
- Civil Commitment (Section 35*) Clinical Stabilization Programs (CSS) = 3
  **Massachusetts General Law 123, Section 35, allows for the civil commitment of individuals who are clinically assessed to be at risk to themselves or to others due to substance use.*

    - *Does your state require that drug treatment facilities be licensed or certified? What licensure, certification, standards, and requirements are applicable? By whom or what entity must they be licensed or certified? Are treatment facilities within your state required to be re-licensed or re-certified? If so, how often are they required to seek re-licensure or re-certification? How many, or what percentage, of the facilities within your state are licensed or certified, and how many are not?*

In order to operate in the Commonwealth of Massachusetts, substance use disorder treatment programs must comply with 105 CMR 164.000. 105 CMR 164.000: *Licensure of Substance*

Abuse Treatment Programs, which governs the operation, and licensure or approval of substance use disorder treatment programs subject to licensure or approval by the Department. A department, agency or institution of the federal government, the Commonwealth or any political subdivision thereof is exempt from licensure under 105 CMR 164.000, but must be approved by BSAS to operate.

Prior to licensure or approval, an applicant must provide evidence of compliance with 105 CMR 164.000. Programs are required to renew their license every two years. In addition, the Department may issue a provisional license or approval in response to a new application for an applicant not previously licensed or when the Department finds that an applicant for renewal of licensure has not fully complied with all applicable regulations, but is in substantial compliance and has submitted an acceptable plan of correction for bringing the facility into full compliance. Provisional licenses require renewal six months from date of issue.

- *Does your state require that physicians or other providers who work within these drug treatment facilities be licensed or certified? If so, what licenses or certifications must they hold?*

Yes, 105 CMR 164.000 requires that Acute Treatment Services Programs and Opioid Treatment Programs provide medical services under the direction of a Medical Director. 105 CMR 164.000 defines "Medical Director" as a physician licensed to practice medicine in the Commonwealth of Massachusetts with specialized training in addiction medicine, who assumes responsibility for administering all medical services performed by the program, either by performing them directly or by delegating specific responsibility to authorized program physicians and qualified healthcare professionals functioning under the medical director's direct supervision.

A qualified healthcare professional includes a physician, registered nurse, nurse practitioner, physician assistant, or licensed practical nurse and the individual must be duly licensed, certified, or registered as such in the Commonwealth of Massachusetts, practicing within the individual's lawful scope of practice.

- *Does your state require drug treatment facilities to seek accreditation?*

Yes, 105 CMR 164.031 requires licensees who are subject to accreditation by any state, federal, or national organization to obtain and maintain their accreditation and to provide documentation of the accreditation to Department. An "Accrediting Body", as defined in 105 CMR 164.000, is an independent, not-for-profit organization or governmental entity that has been approved by the Commissioner of Public Health to accredit substance abuse treatment programs. Some examples of approved Accrediting Bodies include the Commission on Accreditation of Rehabilitation Facilities (CARF), The Joint Commission (JCHO), and the Council on Accreditation.

- *Outside of the licensure and certification process, do you conduct additional oversight and regulation of drug treatment facilities? Does your state conduct inspections or rely on third party inspections of drug treatment facilities? If so, how often are these facilities inspected?*

In addition to the licensure process, The Department is responsible for the investigation of complaints filed pursuant to 105 CMR 164.000. In addition, programs that receive state funding are held to contractual obligations which are monitored by Department contract managers.

The Department may conduct a site visit at any time without prior notice and may inspect the facility, and its staff, activities, and records to determine compliance with 105 CMR 164.000 and applicable state and federal laws. The Department conducts site visits prior to granting or renewing a license or approval, for ongoing monitoring and evaluation of the licensee and compliance with 105 CMR 164.000, and during a complaint investigation.

- *Of the treatment facilities that your state has inspected, how often are there citations or adverse findings? In the event that there is a citation or adverse finding, what happens? Does the facility receive some form of a sanction, a fine, a more thorough review, a corrective action plan, a referral, loss of licensure or certification, or being forced to shut down, etc.?*

Following an investigation by the Department, if there is a finding that a licensed substance use treatment program is not in compliance with any governing regulation, the Department may take a range of action from issuing a deficiency correction order, up to and including revocation of licensure. Following every inspection in which any violation of 105 CMR 164.000 is observed, the Department prepares a written deficiency correction order citing every violation observed, a copy of which is sent to the licensee. The deficiency correction order includes a statement of the deficiencies found; the period within which the deficiency must be corrected; and, the provision(s) of law and regulation relied upon.

Unless the Department states in the deficiency correction order that more urgent corrective action is necessary, based on the seriousness of the deficiency, the licensee is given a maximum 30 days from receipt of the correction order to remove the deficiency. The Department may specify a different date by which the correction(s) shall be completed, in the event that the licensee requests additional time and the Department determines that it is necessary. Failure to submit an acceptable and timely plan of correction or failure to timely correct in accordance with the plan are grounds for an enforcement action including suspension or revocation of a license.

While there are instances when programs do not demonstrate full compliance with the regulations, the majority of deficiency correction orders are for regulatory non-compliance issues that do not have a significant direct impact on health and safety (i.e. missing documentation, adherence to annual training requirements, etc.).

- *How many staff within your department are dedicated to overseeing and regulating drug treatment facilities?*

There are eight (8) BSAS personnel within the Department dedicated to regulation of substance use disorder treatment programs.

- *Has your department examined the problem of patient brokering? If so, please discuss your findings or observations. Has your state ever received reports or*

complaints of a treatment facility or sober living home in your state that is suspected of participating in patient brokering? If so, how are these complaints handled? Has your department taken any steps to combat patient brokers and the treatment facilities or sober living homes that are utilizing patient brokers? If so, please describe this work. Has your state ever conducted an inspection or review of a facility in your state that was found to be giving or receiving financial kick-backs with an individual, sober living home, another treatment facility, or a laboratory? What role does your department play if there is such a finding?

The Department is aware of the problem of patient brokering and monitors referral sources and admission criteria to ensure clients are being treated at the appropriate level of care. The Department has not received complaints specific to patient brokering or financial kickbacks to date. As such, the Department has not conducted an inspection regarding these issues. However, in the event that such a complaint was received, it would be investigated in accordance with 105 CMR 164.000, similar to the investigation of all other complaints against substance use treatment programs. Issues outside of the purview of the Department would be referred the appropriate state or federal agency.

- *Does your state have any laws and regulations to combat patient brokering? If so, what are they? Does the enforcement of any of those laws or regulations fall within your department jurisdiction? Has your department collaborated with any federal or state partners to combat this issue? If so, please elaborate. Have any drug treatment facilities or sober living homes within your state been shut down because they were found to be participating in patient brokering? If so, how many and when?*

Massachusetts does not have laws or regulations specific to patient brokering. However, if the Department received a complaint regarding this issue, it would be investigated in accordance with governing regulations, 105 CMR.164.000. Any issue raised outside of the purview of these regulations might also be referred to the Office of the Attorney General.

- *Does your department regulate call centers that refer individuals seeking treatment to treatment centers? If so, please explain. If not, who in your state is responsible for regulating the call centers? Are there requirements for those who work at these call centers to have certification or training to ensure that they are qualified to help individuals who are seeking assistance in deciding which treatment facility is most appropriate for them?*

The Department does not regulate call centers that refer individuals seeking treatment for substance use disorder. However, the Department contracts with Health Resources in Action (HRiA), a private public health institute, to operate the Massachusetts Substance Use Helpline.

Relative to the HRiA contract, all Helpline SIS (Screening and Information Specialists) are required to be AIRS (Alliance of Information and Referral Systems) Certified Information & Referral Specialists within one year of hire. This is a professional certification to provide quality service delivery. This certification requires 5 continuing education hours annually.

For internal training, materials from NIDA, SAMHSA, Health Care for All, AIRS, other agencies, and internally-developed DPH materials are used. The most important components of this training include information about the substance use treatment system in Massachusetts and motivational interviewing. HRiA works with each new hire to learn the continuum of care, Helpline approach, and all applicable systems. All new hires are well-versed in the treatment system, Helpline protocol, and information and referral practices before they are approved to handle calls on their own. Additionally, HRiA has practice worksheets and conducts shadowing and practice calls to confirm that employees are ready.

- *Does your department oversee or regulate sober living homes? If not, who in your state is responsible for regulating sober living homes? Does your state coordinate with them given the relationship that they may have, whether it's a formal or informal relationship, with treatment facilities? Has your state ever received reports or complaints of a treatment facility or sober living home in your state that is suspected of providing drugs to patients upon release so that the patient will relapse and have to re-enter treatment? In bipartisan staff discussions with various stakeholders, we have learned that some state and local courts require certain drug offenders to reside in a sober living home as a condition of their release. Are you aware of any requirements, similar to this, within your state? If so, is there a requirement that these drug offenders reside in accredited sober living home?*

M.G.L. c.17 §18A requires the Department to establish and provide for the administration of a voluntary training and accreditation program for sober housing. This law states that although a sober home is not required to be certified to operate, a state agency or vendor with a statewide contract to provide treatment services, or a state agency or officer setting conditions for release, parole or discharge, may not refer a person to a sober home that is not certified. BSAS contracts with two vendors, the Massachusetts Alliance for Sober Housing (MASH) and the Recovery Homes Collaborative (RHC) to certify and inspect sober homes, respectively. As of November 25th, 2,160 sober home beds are certified as a result.

In Massachusetts, there are instances where the court, as a condition of probation or an order, or the Parole Board as a condition of parole, has required that the individual under supervision reside in a sober environment.

Thank you again for your dedicated leadership on this important issue.

Sincerely,

Allison F. Bauer
Director, Bureau of Substance Addiction Services
Massachusetts Department of Public Health